

REMARKS

Regarding the Claim Amendments

Claims 24-47 are pending and under current examination. Applicants have amended claims 24, 26, 33, 36, 38, and 43. Support for the amendments to independent claims 24, 33, 36, and 43 can be found in claims 26 and 38, and in the specification at, for example, p. 4, lines 6-8.

Regarding the Office Action

Applicants respectfully traverse the following rejections made in the Office Action:

- (a) rejection of claims 24, 27, 30-32, 36, 39, 40-42, and 46 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,412 (“Blake”) in view of U.S. Patent No. 7,269,643 B2 (“Spaid”);
- (b) rejection of claims 25, 26, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Blake in view of Spaid and in further view of U.S. Patent No. 6,973,490 B1 (“Robertson”);
- (c) rejection of claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Blake in view of Spaid and in further view of U.S. Patent No. 6,327,677 B1 (“Garg”);
- (d) rejection of claims 33, 35, 43, 45, and 47 under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of Blake; and
- (e) rejection of claims 34 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of Blake and in further view of an article entitled “A Simple Hyperbolic Model for Communication in Parallel Processing Environments” (“Stoica”).

Regarding the Rejections under 35 U.S.C. § 103(a)

Applicants request reconsideration and withdrawal of the rejections of claims 24-47 under 35 U.S.C. § 103(a) as being unpatentable over one or more of Blake, Spaid, Robertson, Garg, and Stoica.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness

analysis. *See* M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

In particular, the Office Action has not properly determined the scope and content of the prior art. Specifically, Blake, Spaid, Robertson, Garg, and Stoica, whether taken alone or in any combination, do not teach or suggest what the Office Action attributes to them. In addition, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has not properly interpreted the prior art and considered *both* the invention *and* the prior art *as a whole*. *See* M.P.E.P. § 2141(II)(B).

Amended independent claim 24 recites, among other things, the following features:

providing at least one model to said computer system for predicting a set of download performance parameters for said web pages, said at least one model including at least one optimisation parameter . . . wherein said at least one model includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages.

Blake, Spaid, Robertson, Garg, and Stoica, whether taken alone or in any combination, do not teach or suggest at least the above-quoted features recited in claim 24. Specifically, the cited references do not teach or suggest, among other things, “at least one model [that] includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages,” as recited in claim 24.

Blake discloses using a model to determine “the most probable workload for a set of actual performance measurements.” Blake, col. 4, lines 40-42. Blake, however, does not teach or suggest “at least one model [that] includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages” (emphasis added), as

recited in amended claim 24, at least because Blake does not teach or suggest at least the claimed “sample web pages.”

Spaid discloses a “Web site quality measurement system and method.” Spaid, Abstract. Spaid, however, does not teach or suggest, among other things, “at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages,” as recited in claim 24 (emphasis added), and therefore, even if combined with Blake as suggested by the Office Action, does not cure the deficiencies of Blake.

Robertson does not cure the deficiencies of Blake and Spaid. Although Robertson discloses “throughput” (Robertson, col. 5, line 17), and “total time; total size; total objects; and view stats” (*id.*, col. 6, lines 41-42), Robertson does not teach or suggest, among other things, “at least one model [that] includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages,” as recited in claim 24 (emphasis added). Therefore, even assuming Blake, Spaid, and Robertson could be combined as suggested by the Office Action, the suggested combination would not have rendered amended claim 24 obvious, at least because the combination does not teach or suggest each and every feature of claim 24.

Garg does not cure the deficiencies of Blake, Spaid, and Robertson. Garg discloses a system for monitoring a network environment by collecting recent data associated with operations of the network environment, analyzing the collected data, and determining problems or potential problems based on the analysis. See Garg, Abstract. Garg, however, does not teach or suggest, among other things, “at least one model [that] includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web

pages,” as recited in claim 24 (emphasis added), and therefore, does not cure the deficiencies of Blake, Spaid, and Robertson.

Stoica does not cure the deficiencies of Blake, Spaid, Robertson, and Garg. Stoica discloses “[a] simple hyperbolic model for communication in parallel processing environments.” Stoica, Title. Notwithstanding the Office Action’s allegation regarding Stoica’s teaching of features of claims 34 and 44 (*see* Office Action, p. 10), an allegation with which Applicants do not necessarily agree, Stoica does not teach or suggest, among other things, “at least one model [that] includes at least one parameter indicative of at least one of the type and size of each object included in said set of sample web pages,” as recited in claim 24 (emphasis added), and therefore, does not cure the deficiencies of Blake, Spaid, Robertson, and Garg.

Therefore, Blake, Spaid, Robertson, Garg, and Stoica, whether taken alone or in combination, do not teach or suggest each and every feature of amended independent claim 24. Accordingly, independent claim 24 is nonobvious over the cited references and should be allowable. Although of different scope, independent claims 33, 36, and 43, similarly amended, each recite features similar to those recited in amended claim 24. Therefore, independent claims 33, 36, and 43 should also be allowable for at least the same reasons stated above with respect to independent claim 24. In addition, dependent claims 25-32, 34, 35, 37-42, and 44-47, also should be allowable at least by virtue of their respective dependence from base claim 24, 33, 36, or 43, and because they recite additional features not taught or suggested by the cited references.

Finally, the Examiner alleged that “one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references” (Office Action, p. 12, internal citations omitted). Applicants submit, however, that they have not attacked references individually. Rather, Applicants have conclusively shown that the

references, taken singly or in any combination, fail to teach or suggest all the elements of Applicants' claims.

Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections.

Conclusion

Applicants therefore request reconsideration of the application and withdrawal of the rejections. Pending claims 24-47 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the cited art and the claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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